

(2013) 08 DEL CK 0365

Delhi High Court

Case No: Writ Petition (C) 1903 of 2002

Gan Raj Gandhewar and Another

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision: Aug. 14, 2013

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: S.S. Tiwary, for the Appellant;

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

The petitioners had joined the Indian Army as Tailors and were placed in the pay scale Rs. 210-290. On October 15, 1984, the two were placed in the pay scale Rs. 260-400. With the implementation of the recommendations of the 4th Central Pay Commission, with effect from January 01, 1986 the two were placed in the pay scale Rs. 950-1500, which was the replacement scale to the scale of Rs. 210-290 and when the recommendations of the 5th Central Pay Commission were implemented with effect from January 01, 1996 they were placed in the pay scale Rs. 3050-4590, which was the replacement scale to the scale of Rs. 950-1500. In May 1999 they were placed in the pay scale Rs. 2650-4000 on being informed that they were wrongly given the pay scale Rs. 260-400 in the year 1984 due to an erroneous reading of certain orders passed by the Army Headquarters. The two were informed that tailors were semiskilled workmen requiring to be paid salary in the pay scale Rs. 210-290 and the corresponding replacement pay scales when the recommendations of the 4th and the 5th Central Pay Commission were implemented and not in the pay scale Rs. 260-400, which was the pay scale of skilled workmen. Recoveries were sought to be effected. Vide impugned decision dated February 07, 2002 the Tribunal has upheld the action of the respondents in placing the petitioners in the pay scale Rs. 2650-4000 but has quashed the recoveries sought to be effected.

2. The case of the petitioners before the Tribunal was that the Bangalore, Hyderabad and Guwahati Bench of the Tribunal had quashed the decision to place Tailors in the pay scale of semi-skilled workmen, which decisions were not interfered by the Supreme Court. The respondents relied upon a Full Bench decision of the Mumbai Bench of the Tribunal which opined to the contrary after noting the decisions relied upon by the petitioners as also the fact that the Supreme Court had refused to interfere with the said decisions.

3. The Tribunal, in the instant case, has followed the decision of the Full Bench of the Mumbai Bench of the Tribunal.

4. As regards the decisions of the Bangalore, Hyderabad and Guwahati Bench of the Tribunal it is an accepted position that the Supreme Court declined to grant leave to appeal against said decisions, and we are speaking of the era when the law declared was that the decisions by the Tribunal cannot be challenged under writ jurisdiction before a High Court. Thus, it cannot be said that the view taken by the said three Benches of the Tribunal stands affirmed by the Supreme Court.

5. The grant of the pay scale Rs. 260-400 to Tailors working in the Indian Army in the year 1984 could be traced to the fact that Tailors working in the Ministry of Defence were always treated as non-industrial workers in semi-skilled category and were placed in the pay scale Rs. 210-290 and not the pay scale Rs. 260-400 which was for skilled workers. The two pay scales were the ones recommended by the 3rd Pay Commission for semi-skilled and skilled non-industrial workers. There was a demand by Bootmakers, Carpenters, Painters-III and Painters IRC of being required to be treated as skilled non-industrial workers and for which demand the matter was referred to a Committee which accepted their demand resulting in the Ministry of Defence issuing an OM No. 3822/DS(O & M)/CW-184 dated October 15, 1984 which reads as under:-

Based on the decision taken by the Government on the unanimous recommendations of the Anomalies Committee, I am directed to convey the sanction of the President to the following:

(i) Upgradation of the following jobs from semi-skilled grade (Rs. 210-290) to the skilled grade (Rs. 260-400):-

These orders supersede the earlier orders in regard to fitment of the above categories of workers in the relevant scales of pay from the date of issue of this letter.

Fresh induction to the grades listed in (i) above shall be from:-

(a) semi-skilled categories to be identified by you or feeder categories in the pay scale of Rs. 210-290 already existing under the present recruitment rules, subject to the workers having rendered a minimum of three years" service in the grade and after passing the prescribed trade tests; and

(b) direct recruits with III certificate/Ex-trade Apprentices/NCTVT etc. inducted in the semi-skilled Grade II (Rs. 330-480) and Highly Skilled Grade-I (Rs. 380-560) for common category jobs listed in Annexure-I classified as "Skilled" depending on the functional requirement of highly skilled jobs, in the following manner as a benchmark percentage

This should be given to the trades enumerated in Annexure-I with viable number of jobs and if there are non-viable trades these should be grouped together for the purposes of giving the above benefit. In the trade where the above benchmark percentages are introduced, the selection grade for the skilled grade, if provided, will stand simultaneously abolished as a one-time measure.

These orders will take effect from the date of issue.

The expenditure involved shall be debitable to the respective Head of the Defence Services Estimates.

This issues with the concurrence of the Ministry of Defence (Finance Division) vide their interdepartmental No. 1755/Dir(AF/Eqpt) of the 15th October, 1984.

6. When the above letter was circulated amongst different units and regimental centres of the Indian Army some units placed Tailors in the pay scale Rs. 260-400 but some sought clarification from the Army Headquarters resulting in the Army Headquarters issuing a letter No. 89550/Pay/Org. 1(Pers)(a) dated September 19, 1986 which reads as follows:-

The following categories of civilian personnel were sanctioned the revised scale vide Ministry of Defence letter No. 1(2)/80/D (ECC. IC) dt. 22 Aug 83 (CPRO 81/83) as indicated against each:-

In accordance with para 3 of the above mentioned Govt. Letter where the fitments result in down gradation of jobs, incumbents thereof should be allowed to draw pay in their present scales of pay till they are vested out or promoted to the next higher post. Further entrants/promotees of these jobs should, however, be given the revised scales.

3. Vide Govt. of India, Ministry of Defence letter No. 3822/DS/(O & M) Civ-1/84 dt. 15.10.84, sanction has been accorded for upgradation of following trades from semi-skilled (210-290) to Skilled Grade (Rs. 260-400):-

(i) Bootmaker

(ii) Carpenter

(iii) Painter/Painter III

(iv) Painter (IRC)

4. From the correspondence received from various units it was observed that some of the employees were still carrying the old scales, Ministry of Defence was therefore requested to clarify the following points:-

(a) whether employees carrying old scale of Rs. 210-290, 196-232 and Rs. 210-270 can be authorized the revised scale of Rs. 210-290 under the provisions of CPRO 81/83,

(b) Employees carrying the pay scale of Rs. 210-290 have been sanctioned the revised scale of Rs. 260-400 vide Ministry of Defence letter dt. 15 Oct., 1984, mentioned in para 3 above, Confirm that the revised pay scale of Rs. 260-400 can be further given to employees referred to in para 4 (a) above, w.e.f. 15 Oct. 1984.

(c) Confirm that the employees who were carrying the old pay scale of Rs. 225-308 can be authorized the pay scale of Rs. 260-400 under the provisions of Ministry of Defence Letter dt. 15 Oct. 84 *ibid*.

5. Ministry of Defence have now clarified the points mentioned in para 4(a) to (c) above as indicated below:-

(a) Yes.

(b) Yes w.e.f. 15 Oct. 84

(c) Yes w.e.f. 15 Oct. 84 even if they had opted for old scales.

6. In view of the above you are requested to ensure that the personnel concerned are authorized the revised scales accordingly.

7. On a further clarification by the Ministry of Defence the Army Headquarters issued another letter as under:-

1. Ref. your letter No. 500/C/69/CA/(Civ.) dt. 15 Dec. 1997.

2. MOD/D(Civ.-I) has clarified that only those trades which have been given upgraded skilled grades in MOD letter No. 3822/DS (O & D) Civ-1/84 dt. 15 Oct. 84 in the respective organisations can be given the skilled grade and no other tradesmen. The clarification in para 5(b) of Army HQ letter No. 89550/Pay/Org 1 (Pers) dated 19 Sep. 86 could not have been for those trades which had not been included in MOD letter mentioned above.

3. In view of the above, you are requested to disseminate the above clarification to all concerned for their appropriate action.

8. This was followed by the Adjutant General's Branch at the Army Headquarters writing a letter that Tailors had never been granted the skilled grade, which letter in turn was followed by a letter dated December 18, 1998 issued by the Record Office which reads as under:-

1. Further to our letter No. 500/C/63/ER(Civ.) dated 14 Nov. 98.

Army Headquarters vide letter No. B/87068/AG/PM-2 dt. 7 Dec. 98 and No. 53281/Misc./Org 4 (Civ.) (d) dt. 8.12.1998 (Copies att) have intimated this office that the Ministry of Def/D(Civ-I) has clarified that only those trades which have been given upgraded skilled trades in Min. of Def. Letter No. 3822/DS (C & D) Civ-I/84 dt. 15 Oct. 84 in the respective organisations can be given the skilled grade and no other tradesman. Since Tailor category has not been upgraded to skilled grade vide Min. Of Def. Letter dt. 18 Oct. 1984, the pay scale of Rs. 260-400 is not applicable to Tailor category working in Provost Units and CMP Centre & School. The correct pay of Tailor category as per Vth Pay Commission recommendations is Rs. 2650-65-3300-70-4000. You are requested to fix the pay of the above category accordingly.

3. Please ack.❖

9. And this is the history of the reason why Tailors were initially placed in the pay scale of skilled workmen but later on brought back to the scale of semi-skilled workmen.

10. Suffice would it be to state that it is apparently a case of a confusion in the mind of the some Regimental Centres. No conscious decision whatsoever was taken to place Tailors in the category of skilled non-industrial workmen. A decision pertaining to Bootmakers, Carpenters, Painter III and Painter IRC came to be misinterpreted as applicable to Tailors and the result was various regiments and units of the Indian Army placing even Tailors in the pay scale Rs. 260-400 which was the pay scale of skilled workmen in the year 1984 and therefore placing them in the applicable replacement pay scale till when it was realized that this was wrong.

11. The expert body i.e. the Anomalies Committee only found an anomaly pertaining to Bootmakers, Carpenters and Painters and not Tailors.

12. We find that the Full Bench of the Mumbai Bench of the Tribunal has noted the aforementioned facts and has taken into account the correct legal position that Courts cannot convert themselves into expert bodies on the subject of pay scales. It may be true that as a result of the decisions of the Hyderabad, Bangalore and Guwahati Bench of the Tribunal a large number of Tailors working in the various regiments and units of the Indian Army have received the benefit of a wrong decision but at the same time we find that an equally large number of Tailors could not get benefit because of the decision of the Mumbai Bench of the Tribunal, and this we note to repel the argument that if the impugned decision would be allowed to stand an unjust situation would result. Some Tailors would receive higher wages and some less. Besides, it is settled law that there cannot be any equality in the negative. The writ petition is accordingly dismissed but without any orders as to costs.